

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

AMENDED IN ASSEMBLY AUGUST 25, 2011

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN ASSEMBLY JUNE 16, 2011

**SENATE BILL**

**No. 217**

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**Introduced by Senator Vargas**

February 9, 2011

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An act to amend Section 10166.05 of the Business and Professions Code, and to amend Sections 22109.1 and 50141 of, and to add Section 22065 to, the Financial Code, relating to mortgage loan originators.

LEGISLATIVE COUNSEL'S DIGEST

SB 217, as amended, Vargas. Mortgage loan originators: licensure.

(1) Existing law provides for the licensure and regulation of mortgage loan originators, as defined, by the Commissioner of Corporations under the California Finance Lenders Law and the California Residential Mortgage Lending Act. Existing law requires a real estate license endorsement by the Real Estate Commissioner under the Real Estate Law for a real estate licensee to engage in the business of a mortgage loan originator. Existing law prohibits the issuance of a mortgage loan originator license or a license endorsement to act as a mortgage loan originator if the applicant for a license or license endorsement has been convicted of, or pled guilty or nolo contendere to, a felony during the 7-year period preceding the date of the application for licensing or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

This bill would provide that an expunged or pardoned felony conviction does not require denial of a license or license endorsement but would authorize the consideration of the underlying crime, facts, or circumstances of the expunged or pardoned felony conviction when determining whether to issue a license or license endorsement, as specified.

(2) Existing law exempts from the provisions of the California Finance Lenders Law specified persons and entities, including any person doing business under any law of any state or of the United States relating to banks, trust companies, savings and loan associations, and insurance premium finance agencies. A willful violation of the California Finance Lenders Law is a crime.

This bill would authorize a person exempt from the provisions of the California Finance Lenders Law to apply to the Commissioner of Corporations for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators under the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) if specified requirements are met, including that the mortgage loan originator is covered under an exclusive written contract with, and originates mortgage loans solely on behalf of, the exempt person. The bill would require an exempt person to comply with all rules and orders that the commissioner deems necessary to ensure compliance with the federal SAFE Act and would require an exempt person to pay an annual registration fee established by the commissioner. The bill would authorize a licensed mortgage loan originator who is an insurance producer to originate loans on behalf of an exempt person or on behalf of a licensed finance lender that originates loans for an exempt person, as specified.

Because a willful violation of these requirements under the California Finance Lenders Law would be a crime, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 10166.05 of the Business and Professions  
2     Code is amended to read:

3     10166.05. Notwithstanding any other provision of law, the  
4     commissioner shall not issue a license endorsement to act as a  
5     mortgage loan originator to an applicant unless the commissioner  
6     makes all of the following findings:

7     (a) The applicant has never had a mortgage loan originator  
8     license revoked in any governmental jurisdiction, except that a  
9     subsequent formal vacation of a revocation shall not be deemed a  
10    revocation.

11    (b) (1) The applicant has not been convicted of, or pled guilty  
12    or nolo contendere to, a felony in a domestic, foreign, or military  
13    court during the seven-year period preceding the date of the  
14    application for licensing, or at any time preceding the date of  
15    application, if the felony involved an act of fraud, dishonesty, a  
16    breach of trust, or money laundering. Whether a particular crime  
17    is classified as a felony shall be determined by the law of the  
18    jurisdiction in which an individual is convicted.

19    (2) For purposes of this subdivision, an expunged or pardoned  
20    felony conviction shall not require denial of an application.  
21    However, the commissioner may consider the underlying crime,  
22    facts, or circumstances of an expunged or pardoned felony  
23    conviction when determining the eligibility of an applicant for  
24    licensure under this subdivision or subdivision (c).

25    (c) The applicant has demonstrated such financial responsibility,  
26    character, and general fitness as to command the confidence of  
27    the community and warrant a determination that the mortgage loan  
28    originator will operate honestly, fairly, and efficiently within the  
29    purposes of the article.

30    (d) The applicant has complied with the education and written  
31    testing requirements in Section 10166.06.

32    SEC. 2. Section 22065 is added to the Financial Code, to read:

33    22065. (a) Persons not subject to this division may apply to  
34    the commissioner for an exempt company registration for the  
35    purpose of sponsoring one or more individuals required to be  
36    licensed as mortgage loan originators pursuant to the federal SAFE  
37    Act. A mortgage loan originator eligible for licensure pursuant to  
38    this section shall meet all of the following requirements:

1 (1) Be covered under an exclusive written contract with, and  
2 originate mortgage loans solely on behalf of, that exempt person.

3 ~~(2) Be a licensed insurance producer in good standing~~ Hold a  
4 ~~current insurance producer license~~ under Article 3 (commencing  
5 with Section 1631) of Chapter 5 of Part 2 of Division 1 of the  
6 Insurance Code *that is not suspended or revoked*.

7 ~~(3) Hold a license from the Insurance Commissioner as an~~  
8 ~~insurance producer for~~ Have a current notice of appointment under  
9 Article 9 (commencing with Section 1702) of Chapter 5 of Part 2  
10 of Division 1 of the Insurance Code from an insurer that controls,  
11 is controlled by, or is under common control with that exempt  
12 person.

13 (b) An exempt person shall comply with all rules and orders  
14 that the commissioner deems necessary to ensure compliance with  
15 the federal SAFE Act and shall pay an annual registration fee  
16 established by the commissioner.

17 (c) A licensed mortgage loan originator who is an insurance  
18 producer for an insurer authorized to do business in this state may  
19 originate loans on behalf of a person registered pursuant to  
20 subdivision (a) or on behalf of a licensed finance lender that  
21 originates loans exclusively for a single person that is not subject  
22 to licensure pursuant to subdivision (a) of Section 22050.

23 SEC. 3. Section 22109.1 of the Financial Code is amended to  
24 read:

25 22109.1. (a) The commissioner shall deny an application for  
26 a mortgage loan originator license unless the commissioner makes,  
27 at a minimum, the following findings:

28 (1) The applicant has never had a mortgage loan originator  
29 license revoked in any governmental jurisdiction, except that a  
30 subsequent formal vacation of a revocation shall not be deemed a  
31 revocation.

32 (2) (A) The applicant has not been convicted of, or pled guilty  
33 or nolo contendere to, a felony in a domestic, foreign, or military  
34 court during the seven-year period preceding the date of the  
35 application for licensing and registration, or at any time preceding  
36 the date of application, if the felony involved an act of fraud,  
37 dishonesty, or a breach of trust, or money laundering. Whether a  
38 particular crime is classified as a felony shall be determined by  
39 the law of the jurisdiction in which an individual is convicted.

1 (B) For purposes of this paragraph, an expunged or pardoned  
2 felony conviction shall not require denial of an application.  
3 However, the commissioner may consider the underlying crime,  
4 facts, or circumstances of an expunged or pardoned felony  
5 conviction when determining the eligibility of an applicant for  
6 licensure under this paragraph or paragraph (3).

7 (3) The applicant has demonstrated such financial responsibility,  
8 character, and general fitness as to command the confidence of  
9 the community and to warrant a determination that the mortgage  
10 loan originator will operate honestly, fairly, and efficiently within  
11 the purposes of this division.

12 (4) The applicant has completed the prelicensing education  
13 requirement described in Section 22109.2.

14 (5) The applicant has passed a written test that meets the test  
15 requirement described in Section 22109.3.

16 (6) The applicant is employed by, and subject to the supervision  
17 of, a finance lender or broker that has obtained a license from the  
18 commissioner pursuant to this division.

19 (b) Before denying a license under this section, the  
20 commissioner shall proceed as prescribed by Chapter 5  
21 (commencing with Section 11500) of Part 1 of Division 3 of Title  
22 2 of the Government Code and shall have all the powers granted  
23 under that chapter.

24 SEC. 4. Section 50141 of the Financial Code is amended to  
25 read:

26 50141. (a) The commissioner shall deny an application for a  
27 mortgage loan originator license unless the commissioner makes  
28 at a minimum the following findings:

29 (1) The applicant has never had a mortgage loan originator  
30 license revoked in any governmental jurisdiction, except that a  
31 subsequent formal vacation or set aside of such revocation shall  
32 not be deemed a revocation.

33 (2) (A) The applicant has not been convicted of, or pled guilty  
34 or nolo contendere to, a felony in a domestic, foreign, or military  
35 court during the seven-year period preceding the date of the  
36 application for licensing and registration, or at any time preceding  
37 the date of application, if such felony involved an act of fraud,  
38 dishonesty, a breach of trust, or money laundering. Whether a  
39 particular crime is classified as a felony shall be determined by  
40 the law of the jurisdiction in which an individual is convicted.

1 (B) For purposes of this paragraph, an expunged or pardoned  
2 felony conviction shall not require denial of an application.  
3 However, the commissioner may consider the underlying crime,  
4 facts, or circumstances of an expunged or pardoned felony  
5 conviction when determining the eligibility of an applicant for  
6 licensure under this paragraph or paragraph (3).

7 (3) The applicant has demonstrated such financial responsibility,  
8 character, and general fitness as to command the confidence of  
9 the community and to warrant a determination that the mortgage  
10 loan originator will operate honestly, fairly, and efficiently within  
11 the purposes of this division.

12 (4) The applicant has completed the prelicensing education  
13 requirement described in Section 50142.

14 (5) The applicant has passed a written test that meets the test  
15 requirements described in Section 50143.

16 (6) The applicant is employed by, and subject to the supervision  
17 of, a residential mortgage lender or servicer that has obtained a  
18 license from the commissioner pursuant to this division.

19 (7) The surety bond of the residential mortgage lender or servicer  
20 employing the applicant covers the activities of the applicant and  
21 meets the requirements of Section 50205.

22 (b) Before denying a license under this section, the  
23 commissioner shall proceed as prescribed by Chapter 5  
24 (commencing with Section 11500) of Part 1 of Division 3 of Title  
25 2 of the Government Code and shall have all the powers granted  
26 under that chapter.

27 SEC. 5. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the penalty  
32 for a crime or infraction, within the meaning of Section 17556 of  
33 the Government Code, or changes the definition of a crime within  
34 the meaning of Section 6 of Article XIII B of the California  
35 Constitution.